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UNITED STATES COURT

EASTERN DISTRICT OF CALIFORNIA

8 SACRAMENTO HOMELESS UNION, a
9 local of the CALIFORNIA HOMELESS
10 UNION/STATEWIDE ORGANIZING
11 COUNCIL, on behalf of itself and those it
represents; BETTY RIOS; DONTA
WILLIAMS; FALISHA SCOTT and all those
similarly situated,

12 Plaintiffs

13 vs.

14 COUNTY OF SACRAMENTO, a political
15 subdivision of the State of California; CITY
16 OF SACRAMENTO, a municipal corporation;
and DOES 1 – 100,

17 Defendants.

} Case No.: 2:22-cv-01095-TLN-KJN
PLAINTIFFS' MOTION TO EXTEND OR
REINSTATE PRELIMINARY
INJUNCTION AGAINST CITY OF
SACRAMENTO AND FOR SANCTIONS;
SUPPLEMENTAL DECLARATION OF
FLOJAUNE COFER, PhD, MPH;
DECLARATION OF JESSICA GILBERT;
SUPPLEMENTAL DECLARATION OF
ANTHONY D. PRINCE; [Proposed]
ORDER

INTRODUCTION AND BACKGROUND

21 On July 28, 2022 this Court issued a preliminary injunction, Document No. 22, against the
22 City of Sacramento prohibiting the City from clearing of homeless encampments and individuals
23 who would be thereby exposed to the increased of heat-related great bodily harm or death. The
24 preliminary injunction will terminate on August 25, 2022 unless the court extends or re-instates the
25 the injunction. The month of August has seen repeated days of extreme heat ranging from mid and
26 upper 90 degrees Fahrenheit to triple digits as high as 107 degrees Fahrenheit. (See, Declaration of
27 Crystal Sanchez). Unfortunately, we have also seen repeated violations of the preliminary
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Plaintiffs' Motion for Extension or Reinstatement of Preliminary Injunction

1 injunction by Defendant City of Sacramento which has continued to clear encampments and push
2 unsheltered, unhoused individuals from locations of relative protection from the extreme heat to the
3 sweltering, heat-absorbing, heat-reflecting asphalt and cement of the City's streets. (See,
4 Declaration of Jessica Gilbert and Supplemental Declaration of Dr. Flojaune Cofer.)

5 The forecast for the remainder of August, 2022 and the upcoming month of September,
6 2022, again calls for many days of extreme heat. (See, Declaration of Flojaune Cofer.) For this
7 reason, Plaintiffs seek an Order from this Court to extend the current preliminary injunction an
8 additional 30 more days.

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10 **More extreme heat days are predicted for September, 2022, as occurred last
11 year in September, 2021**

12 In an email communication to this law office dated yesterday, August 23, 2022, Sacramento
13 City Attorney Chance Trimm stated that the City was unwilling to enter into a stipulation to extend
14 the present preliminary injunction before it expires on August 25, 2022.

15 In pertinent part, the email, without any supporting evidence made the following assertion:
16 “Based on historical weather patterns in the City, the City does not agree with plaintiffs’ contention
17 there will be additional “extreme heat” days in September which would warrant extending the
18 Court’s prior temporary restraining order during the month of September.” (See, Supplemental
19 Declaration of Anthony Prince)

20 However, this assertion is directly rebutted by official weather reports for September, 2021
21 which show that Sacramento experienced eight (8) days in which the temperature was between 95
22 degrees Fahrenheit and 100 degrees Fahrenheit or greater. These days included: September 5, 2021
23 (95 degrees F); September 6, 2021 (99 degrees F); September 7, 2021 (100 degrees F); September
24 8, 2021 (104 degrees F.); September 14, 2021 (95 degrees F.); September 21, 2021 (95 degrees F.);
25 and September 23, 2021 (97 degrees F.) As public health expert Dr. Flojaune Cofer stated in her
26 Declaration in support of plaintiff’s original motion and amplifies upon in the accompanying
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1 Supplemental Declaration, these temperatures represent an extreme risk of to persons who are
2 exposed, without shade, to the burning sun and retained heat of the City's streets and sidewalks.

3 See, Declaration and Supplemental Declaration of Flojaune Cofer, PhD, MPH)

4 Thus, "the historical weather pattern" insofar as it includes data as recent as last year's
5 September temperatures, not only rebuts the City's unsupported assertions with regard to what can
6 be expected in September 2022, but shows just the opposite, especially combined with the current
7 forecast, i.e., Sacramento will experience extreme heat days this coming month.
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9 In fact the current forecast of the National Weather Service for this coming September, 2022
10 indicates that on at least five days, Sacramento will experience an average temperature of 95
11 degrees Fahrenheit or greater, including Labor Day Weekend predictions of 98 degrees (September
12 3), 100 degrees (September 4) and 99 degrees on both September 5 and September 6.

13 Finally, as Dr. Cofer explains in her Supplemental Declaration, temperatures reported for
14 Sacramento in the past are *average* daily temperatures, meaning that at different times of the day,
15 temperatures exceeded or fell below triple digits. For example, as depicted in Exhibit ___ to Dr.
16 Cofer's Declaration, on August 18, 2022, temperatures fluctuated wildly from a low of 64 degrees
17 Fahrenheit at 12:00 am to a high of 100 degrees F. at 12:00 pm and, on August 20, from 63 degrees
18 F to a high of 102 degrees F. on the same day. Yet the average temperature for the entire day would
19 be recorded below the hottest part of that day.
20

21 Therefore, on any given day in the upcoming month of September, 2022, depending on the
22 hour of the day, temperatures may exceed the temperature and come close to or exceed triple digits
23 may exceed the forecasted average temperature. In addition, as discussed in the accompanying
24 Supplemental Declaration of Dr. Flojaune Cofer, well after the hottest times of the day have ended,
25 the heat absorbing streets, asphalt and concrete where the swept homeless are pushed continue to
26 radiate extreme temperatures well into the night.
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1 In short, the month of September, contrary to the City's unsupported assertion that there will
2 be no extreme heat days, poses the same risk of heat-related bodily harm and possibly death to the
3 unhoused if forced out of relatively safer, shaded areas onto the sweltering streets of Sacramento.

4 **The City has repeatedly violated and attempted to violate the current preliminary
5 injunction by continuing to clear encampments and sweep homeless persons.**

6 Within days of the issuance of the August preliminary injunction, the City posted notices at
7 the Morrison Creek area advising homeless campers that they would be removed. (See
8 Supplemental Declaration of Anthony Prince.) Fortunately, the Union found out about the planned
9 sweep and immediately contacted the City. (See Supplemental Declaration of Anthony D. Prince).
10 Initially, the city refused to call off the threatened action, but later relented and, by letter dated
11 August 3, 2022, canceled the sweep. (See Declaration of Anthony D. Prince.) In a letter dated
12 August 3, 2022, City Attorney Chance Trimm wrote, "Dear Mr. Prince: In response to your
13 message dated August 2, 2022, please be advised that pursuant to Judge Nunley's prior order. City
14 personnel will not seek to enforce the City's ordinances or the Code of Federal Regulations and
15 remove homeless individuals or their personal property from Morrison Creek during the remaining
16 time Judge Nunley's prior order is in effect."

17 However, that same day, August 3, 2022, the Union learned that yet another sweep was
18 planned by City Park Rangers. (Prince Declaration). Counsel for plaintiffs immediately contacted
19 the City Attorney to insist that the posted notice to vacate be taken down. This time, however, the
20 City refused to call off the sweep or remove the notices.Ultimately, the Union was able to restrain
21 the City from conducting the sweep, but the Notice remains up to this day and has had the effect of
22 frightening many campers who have left the area in fear. (Prince Declaration)

23 Although the Homeless Union has officers who reside in most of the City's larger homeless
24 encampments, we are unable to monitor every camp and every unhoused individual but we continue
25 to receive reports and showing that the City continues to defy the injunction.

1 This includes, for example, the actions of two Sacramento police officers: a female believed
2 to be named “Kirtlan” and a male officer believed to be named “Streigh”— on or about August 7,
3 2022. The officers invaded a tent occupied by Jessica Gilbert, who was five-months pregnant, and
4 her partner, Joseph Jensen, under Highway 50 while the two unhoused campers were asleep.

5 As described in her Declaration accompanying this motion, Ms. Gilbert states Officer
6 Kirtlan unzipped her tent and told her and Mr. Jensen “I know it’s nice and shady over here, but
7 unfortunately you guys can’t stay here. We are going to have to ask you to find a different place to
8 go.” Ms. Gilbert then overheard this officer say to the other police officer, “I just scared the shit out
9 them.” Although the officers took phone numbers from Ms. Gilbert and Mr. Jensen and promised
10 that they would be contacted by a ‘community response team,’ no such contact was ever made and
11 no alternative housing or transportation to a cooling center was provided. The couple was forced
12 into the streets as temperatures neared 100 degrees Fahrenheit. (See Declaration of Jessica Gilbert.)
13 At no time was information about or transportation to a cooling center offered. Eventually, due to
14 the extreme temperatures and lack of protection from the heat, they went to the corner of 39th and R
15 Street where, again, they were able to remain somewhat shaded from the heat.
16

17 Less than a week later, at the 39th and R Streets location, on or about August 13, 2022, Ms.
18 Gilbert and Mr. Jensen were again accosted by Sacramento police officers who ordered them to
19 leave the shaded area and gave them a deadline of 6:30 pm to leave or face confiscation of their
20 belongings. As described in Ms. Gilbert’s declaration, the temperature was “over 100 degrees,” no
21 citation was issued and offer of services or information about cooling centers was provided. (See,
22 Declaration of Jessica Gilbert)

23 Because of the difficulty of monitoring the City’s conduct, particularly at those camps where
24 the Union is not present, which comprise the majority of the thousands of unsheltered Sacramento
25 resident, Plaintiffs reasonably fear that similar violations have occurred and may continue to occur.
26

CONCLUSION

In sum, as discussed above and in the accompanying declarations, several factors converge to show the necessity of extending or re-instating this Court's preliminary injunction:

- 1) Extreme temperature days are forecasted for September, 2022, as supported by the extreme temperatures experience in September, 2021.
 - 2) Even on non-extreme heat days, the cumulative impact of temperatures at or close to triple digits in immediately preceding days represents an uninterrupted increase in the risk of cumulative heat stress, hypothermia, heat stroke and associated heat-related harm.
 - 3) Given that the City has continued to clear encampments despite the current injunction, failure to extend or reinstate the Order will almost certainly give rise to even more widespread displacement of homeless persons from camps and locations of relative protection from the heat into more exposed, dangerous circumstances.

Accordingly, Plaintiffs pray that this Court will extend or reinstate the current Preliminary
Injunction for a period of thirty days as the elements that the Court deemed satisfied for the issuance
of the original Order remain unchanged, if not even more pronounced. Time is of the essence as we
move into another month in which days where temperatures in the upper 90-degree and triple-digit
range are forecasted and likely to occur.

Finally, Plaintiffs pray the Court will issue appropriate sanctions against the City of Sacramento for its violations of the Order and in order to deter future violations should the Court determine that extension or re-instatement of the Preliminary Injunction be appropriate.

Dated: August 24, 2022

Respectfully Submitted

/s/Anthony D. Prince
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Law Offices of Anthony D. Prince
General Counsel for California
Homeless Union/Statewide Organizing
Council,
Attorney for Plaintiffs

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UNITED STATES COURT

EASTERN DISTRICT OF CALIFORNIA

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) **Case No.: 2:22-cv-01095-TLN-KJN**

) **[Proposed] ORDER**

GOOD CAUSE APPEARING THEREFORE, the Court hereby **GRANTS** Plaintiffs' Motion to Extend or Reinstate the Preliminary Injunction of July 28, 2022 for a period of thirty (30) days. In addition, the Court **GRANTS** Plaintiffs' Request for Sanctions against Defendant City of Sacramento in the amount of \$_____.

IT IS ORDERED.

Dated: August 24, 2022

Hon. Troy L. Nunley,
District Court Judge for
the Eastern District of California

[Proposed] ORDER